

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

-----X	:	
BRIAN KING,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil No. 436977
	:	
SERV TRUST,	:	
	:	
Defendant.	:	
-----X	:	

MOTIONS HEARING

Rockville, Maryland

September 23, 2019

DEPOSITION SERVICES, INC.  
12321 Middlebrook Road, Suite 210  
Germantown, Maryland 20874  
(301) 881-3344



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Defendant.	:	
-----X	:	

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September 23, 2019

WHEREUPON, the proceedings in the above-entitled  
matter commenced

BEFORE: THE HONORABLE DEBRA L. DWYER, JUDGE

APPEARANCES:

FOR THE PLAINTIFF:

MAURICE B. VERSTANDIG, Esq.  
The Verstandig Law Firm, LLC  
9812 Falls Road #114-1460  
Rockville, Maryland 20854

FOR THE DEFENDANT:

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MR. DUNBAR: Good morning, Your Honor. Justin Dunbar on behalf of Serv Trust.



1 MR. ANDRES: Good morning, Your Honor. Ben Andres on  
2 behalf of Mr. Myers.

3 THE COURT: Okay. Good morning, all of you. Okay.  
4 You can all have a seat if you'd like. So we're here on a  
5 couple of motions. We have -- the first one is Docket Entry  
6 No. 131, which is 6789 Goldsboro, LLC's motion to compel and  
7 for sanctions against defendant Greg Myers for failing to  
8 appear at his deposition. I think the parties have agreed in  
9 our conference call that this motion is now moot. Is that  
10 right?

11 MR. PELLETIER: Your Honor, Eric Pelletier for 6789.  
12 Just for the record, we withdrew that motion, so that is  
13 correct.

14 THE COURT: So it is withdrawn?

15 MR. PELLETIER: It is withdrawn. We withdrew it  
16 thinking we were going to be in trial today.

17 THE COURT: Okay, so that matter is resolved. So now  
18 we'll move to Docket Entry 163, which is defendant Gregory  
19 Myers's amended motion to dismiss 6789 Goldsboro, LLC's amended  
20 complaint. And at Docket Entry 185 is Goldsboro's response.  
21 So I have -- before we get started, I just want you to know, my  
22 clerk and I have read all the pleadings since we spoke. We  
23 have them all here in front of me.

24 My clerk and I have talked about the issues. He's  
25 prepared a memo for me. So I think I'm very familiar with the

1 arguments that you've raised. So with that said, I'm happy to  
2 hear from you. Happy to hear any arguments that you want to  
3 highlight for me, any case law, but please know I have read  
4 everything. I have a nice chart here of all of the arguments,  
5 particularly when we get into the second motion at Docket Entry  
6 164, which is a little more complex.

7 But with that said, I'm happy to hear from everyone.  
8 But please know I have read it all and I think I know what the  
9 issues are. So if you want to highlight anything or remind me  
10 of anything, I'm happy to hear from you. So with that said,  
11 Mr. Andres, this is Mr. Myers's motion to dismiss. So I'm  
12 happy to hear from you. And then I'm happy to hear from Mr.  
13 Pelletier and anyone else who would like to join in. So Mr.  
14 Andres?

15 MR. ANDRES: Your Honor, with respect to 6789  
16 Goldsboro, LLC's complaint, we had -- Mr. Myers had raised two  
17 issues in the motion to dismiss. One of them involved the  
18 automatic stay of the bankruptcy court. Recently within the  
19 past two weeks, Mr. Myers has dismissed the Chapter 13  
20 bankruptcy. So Mr. Myers does believe that that is moot, so we  
21 won't be pursuing that any further.

22 THE COURT: Okay, so the argument that you made,  
23 which was your initial argument, which I had kind of referred  
24 to as the stay argument, you believe is no longer applicable?

25 MR. ANDRES: That is correct. And I don't believe I.

1 have anything to add to what you've seen in the motion from the  
2 claim, so I don't think I would require any further time.

3 THE COURT: All right, so just for the record, in  
4 Docket Entry 163, which is Defendant Myers's amended motion to  
5 dismiss Goldsboro's amended complaint, there were two arguments  
6 raised in support of the motion to dismiss. The first was what  
7 I'm calling and my clerk and I are calling the stay argument.  
8 And that is that Myers was alleging that Goldsboro violated the  
9 stay that was put in place. Oh, go ahead.

10 MR. ANDRES: Mr. Myers wanted me to --

11 THE COURT: Is this Mr. Myers?

12 MR. ANDRES: This is Mr. Myers.

13 THE COURT: So Mr. Myers, do you want to speak to  
14 your counsel?

15 MR. ANDRES: He wants to come and sit here, though.

16 THE COURT: Sure, that would be great.

17 MR. ANDRES: But I just want to clarify that in terms  
18 of this case for right now, we don't believe that this would --  
19 the stay would prevent that case from moving forward.

20 THE COURT: I understand.

21 MR. ANDRES: We don't have any argument with regard  
22 to any violation of that --

23 THE COURT: I understand. So the first argument that  
24 you raised was that Goldsboro violated the automatic stay that  
25 had been put in place and you articulated that argument very

1 clearly and your position now today that because the bankruptcy  
2 I think you said was denied -- is that right?

3 MR. ANDRES: Voluntarily withdrawn.

4 THE COURT: Okay, so it was voluntarily withdrawn.  
5 Therefore the arguments related to the stay, for purposes of  
6 Docket Entry 163 are -- you're not making those arguments, am I  
7 right?

8 MR. ANDRES: That is correct.

9 THE COURT: Okay, and so the second argument that you  
10 raised in Docket Entry 163 was Myers alleged that Goldsboro's  
11 complaint failed to state a claim for breach of contract.  
12 There really wasn't any argument elaborated there, but I think,  
13 what I got, the gist of Mr. Myers argument was that there was  
14 no contract because there was no meeting of the minds. And so  
15 with that, I will turn to -- let's see here -- Mr. Pelletier.

16 MR. PELLETIER: Thank you, Your Honor.

17 THE COURT: So first the stay argument, I don't think  
18 I need to hear from you on that. But if there's anything you'd  
19 like to say related to the accuracy of the claim, I'm happy to  
20 hear from you -- the breach of contract claim -- I'm happy to  
21 hear from you on that.

22 MR. PELLETIER: I just want to make the record clear  
23 as to the first argument with respect to the stay. From what I  
24 understood, Mr. Andres -- I think it's Andres -- he just got  
25 the case. I'm not familiar -- is that --



1 MR. ANDRES: Yes.

2 MR. PELLETIER: That argument with respect to the  
3 stay and a stay violation -- they're not making it now, but  
4 they're not waiving it.

5 THE COURT: Yes.

6 MR. PELLETIER: Okay, as I understood the argument to  
7 be in any event was that what Mr. Myers had argued was that he  
8 had filed the case, that the discharge was denied back in  
9 September. He filed our amended complaint adding him and then.  
10 after that, he filed a second bankruptcy. Before we filed our  
11 amended complaint to add him, he filed a motion for  
12 reconsideration. I just want to note for the record that we  
13 cited cases that are on point that say a motion for  
14 reconsideration would not have stayed the case further. And  
15 the cases that he cited didn't have anything to do with it.  
16 So --

17 THE COURT: And I agree with that.

18 MR. PELLETIER: Good. I'm glad we agree. Thank you,  
19 Your Honor. Moving on, the next argument is whether we have a  
20 claim for breach of contract. You know, along with the amended  
21 complaint, we attach both the promissory note and the guarantee  
22 which are executed by Mr. Myers. I won't belabor the point,  
23 but breach of contract claims are one of the most simple claims  
24 to state, which we did. There was a contract, a contract for  
25 payment and guarantee. They were breached. No payments were

1 made. That's the entire case we have here. And that we stated  
2 a claim..

3 And so Mr. Myers made some argument that I'm not  
4 fully clear about. You've tried to decipher it. But outside  
5 the pleadings, it incorporates something from somewhere and  
6 tries to argue that we can state a claim. But that would be a  
7 summary judgment issue. And it wasn't set up correctly for  
8 summary judgment. There were no supporting affidavits and so  
9 on. So we would ask that his motion be denied in that regard.

10 THE COURT: Okay. Mr. Andres, did you want to  
11 respond?

12 MR. ANDRES: Your Honor, I think Mr. Myers is --  
13 again, Mr. Myers filed this motion pro se, so I would refer to  
14 Mr. Myers's motion that he had asked for the complaint  
15 attached, the motions that Mr. Myers's basically has put  
16 forward that the documents attached fail to evidence a contract  
17 and that the plaintiffs in this case should be held to relying  
18 on the documents that they produced. And if the documents  
19 produced as Mr. Myers set forth in the motion fail to produce  
20 an actual contract, then they have not properly alleged a  
21 contract and their breach of contract claim should be  
22 dismissed.

23 JUDGE'S RULING

24 Okay. So a couple of things. I think what goes  
25 without saying is that Myers incorrectly relies on a document



1 outside the pleadings. By attaching whatever it is he attached  
2 to that and asking the Court to look at that document,  
3 Goldsboro is saying and arguing that this motion to dismiss  
4 that Mr. Myers filed essentially becomes a motion for summary  
5 judgment. Because in a motion to dismiss, the Court is not  
6 allowed to look outside the four corners of the charging  
7 document, but in a motion for summary judgment, we would be  
8 permitted to do so.

9           So by attaching the documents and asking the Court to  
10 look at them, Mr. Goldsboro is saying that Mr. Myers is  
11 actually asking for a motion for summary judgment. So I think  
12 that's what your argument is, and I think that you're right, if  
13 that's what your argument is. And it's not correct to look  
14 outside the documents. Docket Entry 163 is Myers's motion to  
15 dismiss, and so the Court must look at the pleading and what is  
16 alleged in the pleading and must consider those facts pled as  
17 true and in the light most favorable to Goldsboro, the non-  
18 moving party.

19           And I think it's clear that in reading the complaint,  
20 it clearly states a breach of contract claim. It states that .  
21 there were two contracts that were breached. There's a  
22 promissory note and a guarantee, and it states in two contracts  
23 there was a breach and there were damages. And I think it  
24 clearly sets out that dispute of fact and I think it legally  
25 does so and sufficiently does so.

1 And so accordingly, as I said, I'm treating this as a  
2 motion to dismiss, because that's what it is entitled as. I  
3 think because of that, I will deny defendant -- Mr. Gregory's  
4 amended motion to dismiss at Docket Entry 163.

5 So we'll move to -- you did turn that heat down,  
6 didn't you? I don't know what happened. So we'll move to  
7 Docket Entry 164. Docket Entry 164 is again Mr. Myers's  
8 motion, and it is Mr. Myers's motion to dismiss the King  
9 parties' first amended complaint, and their complaint is for  
10 declaratory judgment. And the King party is represented by Mr.  
11 Verstandig. So Mr. Andres, I will hear from you.

12 There are a number of reasons and arguments raised in  
13 Docket Entry 163, and I just want to try and summarize them and  
14 then I'm going to try to focus you, Mr. Andres, on what I would  
15 like to hear from -- there are several arguments raised. First  
16 is that there's no actual controversy between the parties that  
17 would require a declaratory judgment.

18 The second argument is the stay argument that was  
19 raised in the motion to dismiss against Goldsboro, so I don't  
20 really think I need to hear anything related to the stay  
21 argument.

22 There's the third argument, which is an argument of  
23 insufficient process. Mr. Myers's alleges that the complaint  
24 that the King parties filed was improperly served. And Mr.  
25 Myers argues he was not served with a summons.

1           The fourth argument is that the Court has no personal  
2 jurisdiction over Mr. Myers because he doesn't have continuous  
3 and systemic contacts with Maryland. I'll hear from you. If  
4 you want to touch base on that argument with anything -- I know  
5 you didn't elaborate on it in your motion. I don't know that I  
6 really need to hear from you, but I will if you'd like to say  
7 something on it for the record.

8           The fifth argument is the argument I'd like to hear  
9 from you on, Mr. Andres. Mr. Myers argues the Court lacks  
10 subject matter jurisdiction because the King parties didn't  
11 have standing to bring this suit. And this is what I have  
12 referred to -- my clerk and I have referred to as this alter  
13 ego argument. Apparently the bankruptcy court said we're not  
14 going to rule on the alter ego issue. Let the Circuit Court --  
15 and that would be me -- rule on that.

16           So I do obviously want to hear from the parties on  
17 that argument and well get back to that.

18           The sixth argument is Mr. Myers says that the King  
19 party complaint fails to state a claim for declaratory judgment  
20 because there's no claim or controversy for the Court to  
21 decide. There's no claim against -- the Myers alleged that  
22 they haven't alleged any liability or any fraud or any harm.  
23 So there's no claim or controversy for this Court to decide.  
24 There's no claim against the Myers's alleged, that they haven't  
25 alleged any liability, any fraud or any harm. So there's no



1 claim or controversy for this Court to decide. I'll hear from  
2 you on that if you'd like to put anything on the record on that  
3 argument.

4 The next argument is that the operating agreement  
5 prevents Serv Trust from transferring its interest to Myers.  
6 I'm happy to hear from you on that. The next argument is this  
7 judicial estoppel argument that Myers says the Kings' complaint  
8 is barred by judicial estoppel. I'm not so sure that's going  
9 to persuade me, but I'm happy to hear from you on that.

10 The next argument Mr. Myers raises is one called the  
11 doctrine of waiver. He alleges that the Kings' complaint is  
12 barred by the doctrine of waiver.

13 The next argument is that the Kings' complaint  
14 against Myers is barred by collateral estoppel and res  
15 judicata. Again, I'm not sure that I'm persuaded by the  
16 arguments I've read in your pleadings, but I'm happy to hear  
17 from you.

18 The next argument that Mr. Myers raises is that the  
19 complaint is barred by the statute of limitations. Mr. Myers  
20 argues that the three year statute of limitations has run  
21 because the plaintiffs had knowledge of the cause of action  
22 beyond this period. I'm not sure and persuaded on that  
23 argument. Mr. Myers does not really elaborate on that argument  
24 in his pleadings. So I'm not really sure. But I'm happy to  
25 hear from you, Mr. Andres, on that.

1           So with that said, I'm not going to limit your  
2 argument. We have all morning. I think there are 11 different  
3 arguments that you've raised. But again, I really would like  
4 you to focus your arguments on this alter ego argument. I'd  
5 like to hear from you as to why the Myers argument on this  
6 alter ego theory fails, is not supported by law.

7           MR. ANDRES: Thank you, Your Honor.

8           THE COURT: Or not the Myers argument -- yes, the  
9 Myers argument. Sorry.

10           MR. ANDRES: Thank you, Your Honor. I would address  
11 a couple of those first issues. Similar to the Goldsboro  
12 complaint, Mr. Myers does not waive any argument that the  
13 plaintiffs in this case violated the automatic stay by bringing  
14 the actions. But we won't be -- we will waiving that argument  
15 for purposes of this proceeding. Similarly, I don't -- Mr.  
16 Myers and I do not withdraw any of the deficiencies that we  
17 have alleged in the service of process made upon Mr. Myers, but  
18 at this point, Mr. Myers is here and we believe that that issue  
19 would be moot. Mr. Myers will waive or withdraw any objection  
20 to personal jurisdiction that this Court would have over him at  
21 this time.

22           With that said, I will move on. I believe that Your  
23 Honor is correct that there are two issues here that are  
24 particularly problematic with the Kings' complaint, and that is  
25 the substance of the alter ego allegation and the standing that

1 the King parties have to bring that.

2 . First is that by -- I will address the standing of  
3 the King parties first, Your Honor, and that is as an operation  
4 of federal law, the claims that would allow such an alter ego  
5 claim to bring against a bankruptcy debtor -- and this is well  
6 established -- belong solely to the trustee. And this includes  
7 claims that could be brought by the creditor -- or by the  
8 debtor himself in an action to recover money for the estate or  
9 claims that would be brought against -- by a creditor to bring  
10 that into the estate. And Your Honor, I'm sure you've seen the  
11 cases cited in the briefing, but I'm happy to --

12 THE COURT: Go ahead.

13 . MR. ANDRES: I would specifically refer to Wilson v.  
14 Dollar General Corp., 717 F. 3d 337 and In Re: Charles Edwards  
15 Enterprises, Inc. at 344 B.R. 788. And these cases and many  
16 others are very clear that a claim such as an alter ego claim  
17 are the exclusive property of the bankruptcy trustee and can  
18 only be pursued by that trustee in a bankruptcy proceeding  
19 unless there is a specific judicial determination that it may  
20 be pursued elsewhere. A planning of abstention that the  
21 bankruptcy court does not want to hear the alter ego claim is  
22 not a judicial determination that other creditors are entitled  
23 to bring a claim that belongs only to the trustee.

24 . Furthermore, even if the trustee, who is Mr.  
25 Schlossberg in the bankruptcy case, had filed the complaint,



1 that would have been disallowed because there is also a law  
2 that they are separate from the Maryland statute of limitations  
3 on any claim. There is a limitation when a trustee may bring  
4 claims, such as an alter ego claim, against the debtor. And  
5 that is limited to within a year of his appointment of trustee  
6 in this case.

7 Of course, Your Honor, this does not concede any  
8 claim actually exists, but even the authority to allege a claim  
9 would only exist with the trustee and only within the time  
10 period which I believe based on the filing in this case would  
11 have expired in February of 2018. So there is no authority for  
12 the King parties in particular or even the trustee at this time  
13 to have brought the allegations in the second amended -- or on  
14 the first amended complaint. Excuse me.

15 THE COURT: All right.

16 MR. ANDRES: Furthermore, even if they were allowed  
17 to bring the claim in that regard, the claim for an alter ego  
18 theory simply does not state a claim for which this Court can  
19 grant any relief. There is -- I mean, it is a matter of  
20 constitutional law that a claim must require an actual wrong  
21 and an actual controversy. The allegations of the King parties  
22 are against Serv Trust. There is no allegation that by use of  
23 this alleged alter ego that additional harm has been done to  
24 them.

25 The granting of this declaratory judgment would not

1 resolve any controversy. The alleged debts are all presented  
2 in the complaint against Serv Trust or in the other case that  
3 has been consolidated, 6789 Goldsboro's complaint against both  
4 Serv Trust and Mr. Myers, which is, irrespective of an alter  
5 ego theory, that's based on a promissory note and a personal  
6 guarantee. There would be no change to any of the judiciable  
7 issues that are present in the pending litigation between the  
8 parties, even if this Court were to grant or agree that there  
9 has been an alter ego use of the trust.

10 So therefore, there is no actual controversy and the  
11 declaratory judgment is a nullity. It is not asking for any  
12 proper relief. The King parties don't have standing to bring  
13 it. I think the -- I think the impact of this is pretty clear.  
14 If you look at -- and I'm sure you have as well, but in the  
15 relevant cases cited in our motion, and in the response  
16 motions, there are many cases that have been brought where a  
17 creditor has brought an alter ego action against an individual  
18 who has been trying to use a trust or a corporation as a means  
19 of shielding money from creditors.

20 And one common thread in all of these is that it is  
21 the debtor -- the corporation -- and they bring an alter ego  
22 theory to try to access the funds of the individual who is not  
23 in bankruptcy, because the actual debtor, the nominal debtor is  
24 bankrupt, and they can't access the funds.

25 So here, we flip that on its head, and Mr. Myers is

1 the one in bankruptcy. The debtor, there has been no  
2 allegation that Serv Trust, if it is in fact a debtor, if they  
3 were to prevail on their original claims, would be the one that  
4 owes money. They would be in a better position to collect money  
5 from Serv Trust if they did not bring the alter ego theory.  
6 The only reason that they would have brought an alter ego  
7 theory is because they expect to have a deal worked out with  
8 the trustee in order to access these funds by settling the  
9 case, right, Mr. Myers or Serv Trust being able to present  
10 their own defenses, because they expect that the bankruptcy  
11 trustee would be presenting a more favorable settlement offer  
12 to them.

13           There would be no other basis for bringing a claim in  
14 this way, because they would be in effect compromising their  
15 position by throwing themselves in with Mr. Myers's other  
16 creditors rather than existing as they are now, the only  
17 potential creditor of Serv Trust. So therefore, there is no  
18 actual relief that they would gain that this Court could grant  
19 them in the alter ego theory. So Count 2 of the first amended  
20 complaint must be dismissed, because it fails to state a claim.  
21 Brief indulgence, Your Honor.

22           THE COURT: Okay, than you. Is there anything else  
23 you want to tell me about any of your remaining arguments?

24           MR. ANDRES: Brief indulgence, Your Honor?

25           THE COURT: Sure.



1 MR. ANDRES: Your Honor, there are, as you alluded  
2 to, there are several other arguments that Mr. Myers raised in  
3 his proceeding. And I'd be happy to address those later, but I  
4 think it might be more helpful for us to allow Mr. Verstandig .  
5 to respond at this point.

6 THE COURT: Okay. All right. That's fine. All  
7 right, so who would like to -- Mr. Verstandig, you'd like to  
8 probably be heard from?

9 MR. VERSTANDIG: Yes, Your Honor.

10 THE COURT: Would anyone else like to be heard from  
11 on this argument?

12 MR. VERSTANDIG: Your Honor, I think depending on the  
13 sufficiency or lack thereof of my comments, Mr. Mastro, who  
14 represents the bankruptcy trustee -- might be more eloquent  
15 than myself or he might be less eloquent than myself. .

16 THE COURT: All right, that's fine. So I'll hear  
17 from you first then, Mr. Verstandig.

18 MR. VERSTANDIG: Thank you, Your Honor. Maurice  
19 Verstandig, again on behalf of the King parties. Let me say at  
20 the outset, there's a bit of an oddity to this motion. We  
21 joined Mr. Myers as a "necessary party" because we're seeking  
22 declaratory judgment and Serv Trust is an alter ego. Serv  
23 Trust moved to dismiss the claim that was denied by Judge  
24 Burrell. Serv Trust moved for summary judgment and was denied  
25 by Judge Burrell. Serv Trust filed an answer on our alter ago

1 claim against Serv Trust.

2           If Mr. Myers doesn't wish to be present to contribute  
3 evidence or testimony or whatever it may be towards  
4 adjudication of this matter, we have no objection to him being  
5 let out of the case. He is here solely as a necessary party.  
6 And they are very much accurate when they say we are not  
7 asserting -- meaning my client -- I don't speak for Mr.  
8 Pelletier -- we are not asserting a monetary claim against  
9 them.

10           Maryland has a compulsory joinder rule. Under that  
11 rule, I had to join Mr. Schlossberg, which is why Mr. Mastro is  
12 here. And I had to join Mr. Myers, which is why they are here.  
13 But Maryland case law is also pretty clear that if you have  
14 knowledge of a case, the joinder rule you sort of kind of  
15 follow, then you choose not to participate, judgment is still  
16 binding.

17           I don't mean this in a smart-alecky way, and I don't  
18 mean to say I stand up and concede the motion or anything like  
19 that. But we're going forward on this claim one way or  
20 another. It strikes me as very strange that Mr. Myers would  
21 not want to avail himself of the opportunity to participate at  
22 trial. I certainly believe we were successful there as well.

23           As an initial matter -- and it sounds like you are  
24 better prepared than almost any other judge I've been in front  
25 of in a while, I brought a copy --

1 THE COURT: That's a compliment to you, Andrew.

2 MR. VERSTANDIG: I brought a copy of the extension  
3 order. I also brought a copy of the bankruptcy court's order  
4 clarifying the applicability of the automatic stay, which I  
5 think is relevant because it sort of anticipates that this  
6 Honorable Court will make a ruling. May I approach? This is  
7 the order clarifying my statement -- the last paragraph I'll  
8 point to, that's the one. I have copies for any lawyer or want  
9 or needs it.

10 MR. MASTRO: If you've got a copy, I'll take it.  
11 Thank you.

12 THE COURT: Can I keep this? Is this for me?

13 MR. VERSTANDIG: Absolutely. It's all yours. Your  
14 Honor, my clients are being sued by Serv Trust for myriad  
15 claims that are not the subject of today's motions, but that  
16 are part of this case. My clients are being sued for breach of  
17 fiduciary duty, breach of contract, constructive fraud and so  
18 on and so forth.

19 Our position, very simply, is that Serv Trust cannot  
20 sue us for these things, because it does not own any litigation  
21 rights to such claims to the extent they exist at all. And the  
22 reason is litigation rights are an asset. In the bankruptcy  
23 world, litigation rights are frequently purchased. Litigation  
24 rights are frequently settled. They are viewed as an asset of  
25 the debtor to the point that there's a place on a debtor's



1 schedule to list litigation rights.

2           If Serv Trust is Mr. Myers's alter ego as we allege  
3 -- and I believe we have adequately endeavors and activities  
4 that suggest it is his alter ego, then any litigation rights  
5 belonging to Serv Trust really belong to Mr. Myers and the  
6 moment Mr. Myers filed bankruptcy, those inure to the benefit  
7 of Mr. Schlossberg. So I'm saying that Serv Trust, Mr. Myers,  
8 and the collection of attorneys on the other side of this  
9 courtroom, much as we may respect them, have no right to bring  
10 these causes of action against my clients.

11           Rather, the only party capable of bringing these  
12 causes of action against my clients is Mr. Schlossberg, who is  
13 represented by counsel here today. And the bankruptcy court is  
14 well aware of this. That's why I passed up the two orders. We  
15 didn't want to go rogue on the bankruptcy court.

16           In terms of what is there that is a justiciable  
17 controversy, that is it. We have alleged that they don't have  
18 standing to be sniping at us for lack of a more eloquent term.  
19 And that in reality, the claims they endeavor to adjudicate in  
20 this court belong to the bankruptcy trustee which creates two  
21 parallel problems.

22           One, we're being chased by someone who has no right  
23 to chase us. But two, to whatever extent those claims have  
24 merit -- and I would urge on the record they have no merit --  
25 chasing them in this court without the bankruptcy trustee

1 prosecuting them actually damages the assets of Mr. Myers's  
2 bankruptcy estate. That is why the alter ego claim is relevant  
3 and material. If these claims -- strike that.

4           If Serv Trust is Mr. Myers's alter ego, these claims.  
5 belong to his bankruptcy estate, not to Serv Trust. And we  
6 ought not be here. One of the more interesting things about  
7 the motion to clarify the applicability on that is the  
8 instruction from the judge in the last paragraph. In the event  
9 the Circuit Court for Montgomery County, Maryland determines  
10 that Serv Trust is the debtor's alter ego, then the automatic  
11 stay provided by Section 362 of Title XI in the United States  
12 Code shall immediately apply to Serv Trust, and any further  
13 proceedings against Serv Trust in the matters filed at King, et  
14 al v. Serv Trust, et al, Case No. 436977V in the Circuit Court  
15 for Montgomery County shall be stayed pending further order of.  
16 this Court.

17           These are assets of the bankruptcy court. They need  
18 to be adjudicated and liquidated in the bankruptcy court, both  
19 from a federal venue point of view, a jurisdictional point of  
20 view, and an equitable point of view.

21           So we seek that determination. I believe that is  
22 more than a justiciable controversy in the fact there's a  
23 federal court I believe politely inappropriately nudging this  
24 Honorable Court to make that determination weighs heavily in  
25 favor of them. Ultimately, Mr. Mastro will support that the

1 trustee would certainly have an interest in these claims.

2           There was a reference towards the end of Mr. Andres's  
3 argument, which I think has appeared at least one before, or  
4 there is argument in papers that we have some underhanded deal  
5 with the trustee to settle these claims. Let me be very clear.  
6 We have entered into no agreements with the trustee to resolve  
7 these claims. If they become an asset of the bankruptcy court,  
8 will I call Mr. Mastro the next morning and tried to settle  
9 these claims? Absolutely. I'd be negligent not to.

10           There is no agreement in place. It's not there.  
11 There's also a reference in one of the footnotes to this motion  
12 that my client is paying Mr. Mastro's attorney's fees. That  
13 would come as a surprise to me and give me disclosure as  
14 requisite of a bankruptcy trustee and his counsel, and that  
15 would come as a surprise to the bankruptcy court. There's no  
16 reason to credit that.

17           There is case law that establishes that bankruptcy  
18 courts take note of where there's an alter ego. I don't think  
19 that was really raised today or issued today. And I'm not too  
20 worried about that. I do want to say in terms of the  
21 limitations argument that sort of suggested the two years,  
22 that's for an avoidance action.

23           THE COURT: That's what?

24           MR. VERSTANDIG: That's for an avoidance action.

25 That's where you're trying to unwind a conveyance of assets on



1 the eve of bankruptcy to a third party. We're not suggesting a  
2 fraudulent conveyance. We're suggesting an alter ego. Mr.  
3 Myers used this trust as his personal bailiwick.

4 THE COURT: So I guess I just -- a lot of what you  
5 say make sense. But how do I -- how do I not take into  
6 consider what Mr. Andres argued, because the alter ego claims  
7 -- and I think the case law on this is really clear. So tell  
8 me what I'm missing. Alter ego claims belong to the trustee.

9 MR. VERSTANDIG: Yes. The trustee has asked us to  
10 pursue such matters in this case and the bankruptcy court has  
11 been very clear in suggesting through its order of extension  
12 that the State court litigation was ongoing and judicial  
13 economy favors a resolution as part of this case. If you  
14 prevail, my clients do not have the right to start seizing Mr.  
15 Myer's assets. I think that's the critical distinction. My  
16 clients can't go out and ask the sheriff to levy upon Serv  
17 Trust's lawn mower. I don't think Serv Trust actually owns a  
18 lawn mower, but for these purposes -- my clients get no  
19 monetary benefit out of this. The benefit of the claim goes to  
20 the bankruptcy trustee and then derivatively to the creditors  
21 in Mr. Myers's bankruptcy estate.

22 Once it's established that Serv Trust is its alter  
23 ego, if there's going to be a marshaling of Serv Trust's  
24 assets, it certainly falls on Mr. Schlossberg in the bankruptcy  
25 court to take the discovery requisite to determine what those

1 assets are, to levy upon them, to seize upon them, to liquidate  
2 them, and to proceed accordingly. My client would have no  
3 standing to do that. And candidly, my client had no interest  
4 in doing that, because my client is not a creditor of the  
5 bankruptcy estate.

6           So we're not trying to pierce a veil for purposes of  
7 recovering a monetary judgment. And I think that's the  
8 distinction with much of the case law that's been referenced  
9 herein. We're saying that because of an alter ego construct,  
10 the party coming at us -- and for want of a more eloquent term  
11 -- lacks standard to do so -- and we've got a bankruptcy court  
12 and a bankruptcy trust cognizable or making these claims, and  
13 the trustee seems to be supportive of our making these claims.  
14 I don't mean to suggest the bankruptcy court takes an interest  
15 one way or another. And these are things that have to be  
16 determined.

17           If not, it would create a terrifically inequitable  
18 situation because if my clients and I prevail at trial, and it  
19 turns out that there was some merit to the claims, which again,  
20 there was not, we would have defeated an asset of the  
21 bankruptcy estate. Similarly, if Serv Trust were to prevail at  
22 trial and seize money from my clients upon its affirmative  
23 claims, it would be taking money that belongs to Mr.  
24 Schlossberg in his official capacity. So that's the  
25 distinction I would urge. The fact is that we're not seeking

1 money. We're not trying to recover on a judgment. And I think  
2 that's what distinguishes us from existing case law and that  
3 also explains the orders from the bankruptcy court and this  
4 somewhat unique posture of this case.

5 Your Honor, perhaps I've rambled too long and Mr.  
6 Mastro might be more eloquent than myself on some of the  
7 bankruptcy points.

8 THE COURT: Okay, I'm happy to hear from him.

9 MR. VERSTANDIG: And as with Mr. Andres, I'd rest on  
10 my papers for the other arguments.

11 THE COURT: Okay.

12 MR. VERSTANDIG: I don't mean to suggest anything  
13 else.

14 THE COURT: Okay. Thank you. So Mr. Mastro -- is it  
15 Mastro?

16 MR. MASTRO: Mastro. Yes.

17 MR. ANDRES: If I may? Did you file any motions  
18 based on -- in this --

19 MR. MASTRO: I have not filed any motions. The  
20 bankruptcy trustee is not a party to these pending motions.  
21 The bankruptcy trustee has been added as a nominal defendant in  
22 these cases as Mr. Verstandig has described. And really, I  
23 think the purpose of me standing here is not necessarily to  
24 argue one side or another, but to just advise the Court that,  
25 you know, in bankruptcy cases, it's not uncommon for --



1 trustees have very limited resources to pursue all these  
2 actions.

3           So many times, a creditor will pursue an action. And  
4 the creditor in this case has been authorized by the trustee to  
5 do that. I believe this has all been disclosed and filed with  
6 the bankruptcy court. So had I known this was going to come up  
7 today, I would have, you know, brought that stuff. But to the  
8 extent that there's any argument that this is being pursued  
9 without the knowledge of the trustee or without the trustee's  
10 consent, I can tell you that that's not the case. And you  
11 know, I'm happy to answer any other questions. I think Mr.  
12 Verstandig stated correctly, about 546, that that limitation  
13 only refers to the trustee's avoidance powers.

14           A bankruptcy court would not be an avoidance action.  
15 It would simply be classified as an adversary case to determine  
16 whether or not this is an asset of the bankruptcy estate or  
17 not. And that's how it started in the bankruptcy court, and  
18 then Judge Lipp decided to abstain and said alter ego is really  
19 a state law determination, Montgomery County should do that.  
20 And that's my understanding of how we got here. And I'm happy  
21 to answer any questions the best I can, Your Honor.

22           THE COURT: And I'm going to ask you the same  
23 question I asked of Mr. Andres -- Mr. Verstandig suggests --  
24 and again, I hadn't read this order upon motion to clarify  
25 acceptability of automatic stay until this morning. Mr.

1 Verstandig suggests that the last paragraph is the bankruptcy  
2 court --

3 MR. MASTRO: Judge Lipp, Your Honor.

4 THE COURT: Okay -- is sort of nudging me, the  
5 Circuit Court for Montgomery County, to determine that Serv  
6 Trust is Myers's alter ego. Do you agree with that?

7 MR. MASTRO: Well, the way I read it, Your Honor, I  
8 mean, I don't know that the bankruptcy court is telling you to  
9 rule one way or the other. I think what the bankruptcy court  
10 is saying is that upon a ruling, if that ruling is in favor of  
11 Mr. Verstandig's client, then at that very moment, the  
12 automatic stay would attach.

13 THE COURT: Yes, right.

14 MR. MASTRO: Because then Serv Trust becomes an asset  
15 of the bankruptcy estate.

16 THE COURT: Right. Serv Trust becomes an asset at  
17 that point.

18 MR. MASTRO: Correct. Correct.

19 THE COURT: All right. Okay. I appreciate your  
20 comments.

21 MR. MASTRO: You're welcome, Your Honor. If you need  
22 anything else, I'm here.

23 THE COURT: Okay, so hang on one second while I take  
24 a note here, Mr. Andres. So, Mr. Andres, tell me why Mr.  
25 Verstandig is wrong. Tell me why his interpretation -- you

1 know, the federal law that you cited, the Wilson case an  
2 others, you said it's just obvious, Judge, it's as obvious that  
3 can be that the claim for -- these alter ego claims, this alter  
4 ego theory can only be pursued by the trustee. It only belongs  
5 to the trustee. Alter ego claims -- and I wrote this -- I  
6 think this was your language -- are exclusive property of the  
7 trustee. So tell me why what Mr. Verstandig said is not  
8 persuasive, should not be persuasive to me?

9 MR. ANDRES: Well, Your Honor, I don't believe that  
10 Mr. Verstandig addressed the issue that the trustee must be the  
11 one to bring the claim. And they have brought Mr. Mastro here  
12 and they have put forward that nothing is being done without  
13 the trustee's knowledge. And Mr. Schlossberg is aware of these  
14 claims. That is not what the bankruptcy law and the case law  
15 requires. There has to be -- in order for a derivative  
16 standing to exist for a creditor, that has to be a judicial  
17 determination that is given to the creditor.

18 THE COURT: Well, Mr. Verstandig said that the  
19 trustee has asked the plaintiff to pursue these claims.

20 MR. ANDRES: The trustee -- while on one hand he  
21 denies any, you know, deals and communications he has, and on  
22 the other he says that he has gotten the blessing of the  
23 trustee, but that is not reflected in any orders or hearings --  
24 or proceedings in the bankruptcy court, where the trustee would  
25 give a notice of standing. There would be an opportunity to



1 object and the Court could then enter an order granting  
2 derivative standing.

3 THE COURT: Okay.

4 MR. ANDRES: The orders that Mr. Verstandig presented  
5 don't do that. They are simply -- one is simply a note that  
6 the bankruptcy court is not going to hear the issue. And I  
7 think even if Mr. Mastro were correct, there was no indication  
8 one way or another in that bankruptcy court's order. There is  
9 nothing saying Judge Dwyer, please grant this, this is what you  
10 should do. But simply saying, I don't want to hear it, if the  
11 Circuit Court does something, then something can happen here.  
12 But that is not an affirmative grant of derivative standing,  
13 which is what is required by the bankruptcy code and the case  
14 law.

15 Further, to the extent that the motion to clarify the  
16 applicability of automatic stay was entered in -- that was  
17 entered in Case 19-17428, that is the case that has been  
18 dismissed. I have a copy of the order dismissing that. I can  
19 show you that if you would like to see that.

20 MR. VERSTANDIG: I don't know what it is. I'm sorry.

21 MR. ANDRES: It is the order showing that that case  
22 was dismissed. Again, I don't think that that order actually  
23 portends anything as that simply stated that the bankruptcy  
24 court is not objecting to the stay and if the case is  
25 dismissed, then certainly there would be no stay from that



1 case. As you can see from the other order that Mr. Verstandig  
2 presented, there is still bankruptcy proceeding and Mr. Myers  
3 is still a bankruptcy debtor. Any claims in that action still  
4 belong solely to the trustee unless there is an affirmative  
5 judicial determination that derivative standing exists for  
6 someone else, for a creditor to bring that claim.

7 And I have more cases, but I think from the memos and  
8 all the case law stated, I think Your Honor can see -- I  
9 disagree that I just went with the interpretation that 546  
10 doesn't present at any adversary proceeding, including this  
11 claim for an alter ego theory, which would -- it has the same  
12 effect that they are attempting to bring money that was  
13 allegedly fraudulently removed from the bankruptcy debtor's  
14 estate back into the estate and that such an action would be in  
15 the domain of the trustee and therefore governed by the statute  
16 of limitations of a trustee bringing those claims, which has  
17 long since expired.

18 And I think -- I just want to make sure that Your  
19 Honor keeps it clear that there are really two standing issues.  
20 The first is the grant of authority for this matter to be heard  
21 or brought by any creditor rather than only by the trustee in  
22 the bankruptcy court. The other is -- and this might go more  
23 to Mr. Verstandig's first point that although Serv Trust has  
24 already filed a motion that was denied, Mr. Myers has filed a  
25 motion to dismiss and Mr. Myers, if successful, it's not an

1 allegation that Mr. Myers should be dismissed as a defendant.

2 But this is an allegation that Count 2 of the first  
3 amended complaint, the claim for declaratory judgment, should  
4 be dismissed. The fact that Judge Burrell previously denied  
5 other motions does not prevent you from issuing, if you are  
6 persuaded by the arguments put forward by Mr. Myers, that the  
7 Count 2 of the first amended complaint is without merit, you  
8 are certainly free to do that with regard to some prior ruling  
9 by Judge Burrell in this case.

10 THE COURT: So let me ask you about that. Clearly  
11 this argument was not raised in front of Judge Burrell,  
12 correct?

13 MR. VERSTANDIG: It was.

14 THE COURT: It was?

15 MR. ANDRES: It was not.

16 MR. VERSTANDIG: I want to be clear -- not every  
17 nuance, or that I would suggest that every citation was in  
18 there necessarily. But yes, I stood up and defended the  
19 argument that alter ego liability is not a thing that ought to  
20 happen.

21 THE COURT: Is not what?

22 MR. VERSTANDIG: Is not a thing that ought to be  
23 found in the prism of this case. Again, many specifics were  
24 different and it would be disingenuous for me to say it was  
25 absolutely identical. But no, I defended it in front of Judge

1 Burrell, that the alter ego claim does not state a colorable  
2 claim for similar reasons and may not proceed for similar  
3 reasons. And we were fortunate to prevail in front of Judge  
4 Burrell. Which is why I believe we're going forward against  
5 Serv Trust one way or another.

6 THE COURT: And that was in the -- the motion you  
7 made in front of Judge Burrell was what?

8 MR. VERSTANDIG: I didn't -- I was defending their  
9 motion to dismiss and the motion for summary judgment.

10 THE COURT: And your client Serv Pro?

11 MR. VERSTANDING: No, I represent the King parties.  
12 Serv Trust --

13 THE COURT: So why were you -- Serv Pro was the  
14 subject of the motion to dismiss.

15 MR. VERSTANDIG: Yes, Your Honor. My clients are the  
16 ones that are seeking the declaratory judgment that Serv Trust  
17 is the debtor's alter ego. So Serv Trust brought a motion to  
18 dismiss my client's claim and a motion for summary judgment on  
19 my client's claim.

20 THE COURT: Okay.

21 MR. VERSTANDING: And I was fortunate to defend those  
22 tangential -- counsel pointed out to me, there was an  
23 application for derivative standing that underlies the order of  
24 abstention. It's referenced on page 2 of the order of  
25 abstention towards the bottom.



1 THE COURT: Okay. So what else --

2 MR. MASTRO: Your Honor, if I may? I was not in the  
3 case at the time that the Serv Trust motion was argued. But I  
4 do have a copy of the motion that Serv trust filed and that was  
5 ruled on by Judge Burrell and it raises one of these issues.  
6 It raises the issue of whether a proper claim under the  
7 Declaratory Judgment Act was stated by Count 2. There was no  
8 allegations in the -- that I see in the motion by Serv Trust  
9 that the bankruptcy court retained its jurisdiction on the  
10 trustee and not a creditor has standing. So I don't believe  
11 that that issue was actually considered by Judge Burrell in her  
12 ruling.

13 Furthermore, and I remind you that regardless of what  
14 Judge Burrell decided, under Electric General Corporation v.  
15 Lebance (phonetic sp.), one judge of a trial court ruling on a  
16 matter is not bound by a prior ruling in the same case by  
17 another judge.

18 THE COURT: I understand. And understand. I just  
19 was curious as to how she ruled. So I guess going back to the  
20 whole Serv Trust thing in front of Judge Burrell, and maybe not  
21 going back to that, but would Serv Trust have standing -- an I  
22 guess this question is for you, Mr. Verstandig -- if Serv Trust  
23 would have standing because the litigation rights belong to the  
24 trustee, does that question make sense to you?

25 MR. VERSTANDING: I think you mentioned the King



1 parties have standing. Serv Trust is the alleged alter ego.

2 THE COURT: Right. Okay, so well, I guess I meant to  
3 ask Mr. Andres the question, not you. So I mean, if Serv Trust  
4 would have standing because the litigation rights would belong  
5 to the trustee --

6 MR. VERSTANDIG: I'm not sure I understand your  
7 question, Your Honor.

8 THE COURT: Yes, I don't think I understand it  
9 either. Okay --

10 MR. ANDRES: Your Honor, I think I can clarify the  
11 answer to that on two fronts. If we're correct that the  
12 litigation rights belong to the trustee, Serv Trust has no  
13 standing to bring the claims in this Court.

14 MR. DUNBAR: Your Honor, that's an issue that's an  
15 issue for trial.

16 THE COURT: All right --

17 MR. ANDRES: I agree, whether we're correct is a  
18 triable fact.

19 MR. DUNBAR: That's all.

20 MR. ANDRES: I am not asking you to make an alter ego  
21 finding today, Your Honor.

22 THE COURT: Okay, so what did you just say again?  
23 And you were sort of interrupted there by Mr. Dunbar. Tell me  
24 again what you just said -- Myer -- if you're correct --

25 MR. ANDRES: If the King parties are correct that the

1 litigation rights belong to the trustee, Serv Trust does not  
2 have standing to bring them in this case. Period. Hard stop.  
3 They are counter claims, and that is why the alter ego issue  
4 has to be adjudicated, because Serv Trust is positing them as  
5 counter claims.

6 THE COURT: So if King is correct that the litigation  
7 rights belong to the trustee -- all right --

8 MR. ANDRES: Yes?

9 THE COURT: Then Serv Trust, you agree, has no  
10 standing. Is that what you said?

11 MR. ANDRES: That's our position, absolutely. If  
12 they belong to the trustee, Serv Trust cannot -- because Serv  
13 Trust is the debtor's alter ego -- if that is true, Serv Trust  
14 is the debtor's alter ego. The debtor can't pursue claims  
15 against the debtor himself. That would be backhanded and  
16 create vast chaos. And that's why we seek this determination,  
17 because it goes to whether or not their counter claims can even  
18 be heard in this case. Only because I repeatedly nudged -- and  
19 I think there's importance -- I don't mean to go back to this -  
20 - the trustee expressly and enthusiastically consents to  
21 derivative standing and the bankruptcy court was aware of that,  
22 et. cetera, when it was ordered that this matter be heard in  
23 this court.

24 But Your Honor, if my client is correct, Serv Trust's  
25 counter claims don't exist in this court. It's not just that

1 they can't pursue them. No offense to Your Honor, but you  
2 don't have jurisdiction to hear them, because they're an asset  
3 of the bankruptcy estate under 28 U.S.C. 157. Don't hold me to  
4 that. It's a court proceeding that can only be administered in  
5 a federal court. Liquidation of the bankruptcy estate's assets  
6 including litigation rights is the province of the bankruptcy  
7 court and the province of the trustee. Serv Trust can't do  
8 that in this court.

9 THE COURT: All right, what else do you want me to  
10 hear from you? Anything else on this issue? Alter ego?  
11 Anybody else want to say anything on the alter ego issue? I'll  
12 come back to you. Anybody else?

13 MR. VERSTANDING: We'll submit on papers.

14 THE COURT: All right, Mr. Andres? Oh, I'm sorry,  
15 did you --

16 MR. ANDRES: Just a couple of clarifications I think,  
17 Your Honor. First, the order that they're referring to that  
18 they passed up where it says an attached e-mail shows that the  
19 trustee expressly consents. That expressly consents to  
20 Goldsboro pursuing the complaint. There's not even an  
21 allegation that --

22 THE COURT: Where are we?

23 MR. ANDRES: Bottom of page 2 of the order of  
24 abstention.

25 THE COURT: Yes, I don't see it there. Can you be

1 more specific? Where at the bottom?

2 MR. ANDRES: The last two sentences.

3 THE COURT: Okay, on December 14 -- right?

4 MR. ANDRES: Right. December 14, 2018, plaintiff  
5 filed a motion for derivative standing to pursue the complaint  
6 to which an attached e-mail indicates that the trustee  
7 expressed a consent to go over pursuing the complaint.

8 MR. ANDRES: Right. And that is to Goldsboro pursuing  
9 in its position of the plaintiffs, Goldsboro and the King  
10 parties are not the same. So that would have no bearing on the  
11 King parties bringing this complaint.

12 THE COURT: All right.

13 MR. ANDRES: Second, there is a statement in here  
14 that there was a motion for derivative standing filed but there  
15 is I think no order granting a motion for derivative standing,  
16 or plaintiffs would certainly have presented that if the  
17 bankruptcy court had so ruled.

18 THE COURT: All right.

19 MR. ANDRES: So simply filing a motion doesn't  
20 entitle someone to relief.

21 THE COURT: All right.

22 MR. ANDRES: Furthermore in regards to Mr.  
23 Verstandig's argument as to if they are successful, there is no  
24 standing -- that is only partially correct. That is not --  
25 that does not mean if they are successful there is no claim



1 against the King parties. It means someone else would be  
2 responsible and have the decision-making authority to pursue  
3 that claim.

4 This is not the purpose of the Declaratory Judgment  
5 Action. It is supposed to -- it would be to resolve a  
6 judiciable claim. That is not what would happen here. This  
7 would simply give the King parties a more favorable opposing  
8 party to deal with. It would not resolve an issue. Whether or  
9 not it is heard in this Court -- and I would suggest that it's  
10 not a court proceeding and if they are permitted to come from  
11 the bankruptcy court to pursue this claim here, then there is  
12 no reason the same claims could not also be granted by the  
13 bankruptcy court to allow that secondary proceeding to also  
14 occur here.

15 So it does not resolve the claims against the King  
16 parties, it simply gives them a more favorable opposing party.  
17 And finally, this is all moot because the claims only belong to  
18 the trustee. The trustee must be the one to bring the claim.  
19 And even if the trustee had -- even if the trustee were  
20 properly a party bringing the claim here, he cannot do so  
21 because it is past the statute of limitations. He has passed  
22 his opportunity to bring such a claim against Myers to try to  
23 bring the Serv Trust property into the bankruptcy estate and  
24 adjudicate it in that fashion.

25 THE COURT: All right, so let me just go back and I'm

1 going to try -- maybe I'm not understanding, but Mr.  
2 Verstandig, just tell me in the most simple language you can  
3 find why isn't Mr. Anders right in that his last few arguments  
4 from way back in the very beginning. Why isn't the trustee the  
5 only one that can bring the claim? Why? Tell me why in two  
6 sentences.

7 MR. VERSTANDIG: Because we're not seeking money.

8 THE COURT: You're seeking to have Mr. Myers declared  
9 the alter ego of Serv Trust. Why isn't that relief only  
10 allowed to the trustee?

11 MR. VERSTANDIG: Two reasons. One, because it is  
12 raised in a counter claim, we are defending their standing. We  
13 are arguing their lack of standing to bring the counter claim.  
14 Let me give an analogy on that. Let's suppose that we sued  
15 them for assault and there's no assault claim in this case.  
16 And let's suppose they counter claimed for breach of a  
17 promissory note. And on the back of the promissory note, there  
18 was an endorsement from them to some third party.

19 We would have every right to seek a declaration in  
20 this court that they don't have the right to enforce that  
21 promissory note. It's been endorsed over to a third party. It  
22 belongs to the third party. And then we would probably go out,  
23 we'd get the third party, we'd tell the third party come join  
24 us in this court as an interested party because hey, we might  
25 owe money under a promissory note. We deny it. But if we

1 don't owe money to the third party, we certainly don't want to  
2 pay a promissory note twice.

3 THE COURT: Yes.

4 MR. VERSTANDIG: I also cannot stress enough the  
5 trustee's consent, the bankruptcy court's acknowledgment of the  
6 trustee's consent to derivative standing, and the bankruptcy  
7 court's decision to -- I don't want to say direct this court,  
8 because that's a misstatement, but to make very clear that it  
9 understands this matter is being adjudicated in this court and  
10 it seems knowledgeable to posture.

11 I mean, trustee's consent has been reiterated on the  
12 record today. But because it's a counter claim and thus  
13 something we have to deal with here, we're allowed to stand up  
14 and say, whoa, we don't want to pay an assigned promissory note  
15 twice, and we certainly don't want to be sued by someone who  
16 doesn't have standing to enforce an assigned promissory note.  
17 And that's basically what we're doing.

18 If the judge's ruling that the trustee, in lieu of  
19 being a nominal defendant must be a nominal plaintiff, I'd have  
20 to have a conversation with the trustee and I can't speak for  
21 them, but I'd imagine we'd simply ask you to recapture the  
22 case. I mean, they're here, the bankruptcy court knows they're  
23 here. This matter is being pursued and the trustee is  
24 exceedingly interested.

25 THE COURT: All right. Second prong of Mr. Andres's



1 argument, the statute of limitations argument. Why is he  
2 wrong?

3 MR. VERSTANDIG: For two reasons. One, this isn't a  
4 fraudulent conveyance case. Two year limitations under 546 and  
5 548 of the bankruptcy code says that -- and I'm using a  
6 hypothetical that has nothing to do with this case. John Doe  
7 knows he's going to go into bankruptcy. Three months before he  
8 files his bankruptcy petition, he writes his oldest son a check  
9 for \$7 million and says son, take this money and use it well.  
10 And by the way, buy me dinner when I get old. The bankruptcy  
11 court has got two years to reach back and pull that money  
12 aside.

13 Contrast -- six months before John Doe files  
14 bankruptcy, John Doe takes \$7 million and puts it in a bank  
15 account that he doesn't tell anyone about. When he files his  
16 bankruptcy petition, eh doesn't list that bank account on the  
17 schedules. The trustee finds out four years later that John  
18 Doe concealed that bank account and it should have been an  
19 asset of the estate all along. Two years limitation doesn't  
20 apply. It's not a fraudulent conveyance it is a failure to  
21 list an asset of the estate, and a judicial determination of  
22 what the assets of the estate are. If Serv Trust is his alter  
23 ego, we're not clawing back their property. We're saying your  
24 property has been his property at all times relevant.

25 THE COURT: Okay. All right, Mr. Andres, I'm going



1 to give you the last word. It's your motion.

2 MR. ANDRES: Thank you, Your Honor. Your Honor, I  
3 think first that the idea that the trustee would now  
4 enthusiastically join as a nominal plaintiff, I'd like to point  
5 out that the trustee has stated in the bankruptcy that he is  
6 not pursuing any further actions against Mr. Myers's bankruptcy  
7 estate. Even as late as last week when we were confirming the  
8 claims and issues with Your Honor, Mr. Mastro, for Mr.  
9 Schlossberg, stated that Mr. Schlossberg is not pursuing  
10 anything in this case. He is not pursuing an action. This is  
11 entirely a fabrication by the King parties in order to not  
12 achieve a resolution which you undermined the authority of the  
13 correct parties to facilitate this trial of these issues.

14 There is no -- I mean, Mr. Verstandig's hypotheticals  
15 are irrelevant. There's no situation here where the King  
16 parties will have to pay twice on a promissory note if  
17 subsequently there is a bankruptcy situation. If Serv Trust  
18 receives assets and the trustee had the authority to re-start a  
19 claim against the Myers bankruptcy or from the Myers bankruptcy  
20 estate against Serv Trust and bring those assets into the case,  
21 anything that the King parties had paid to Serv Trust would  
22 simply be brought into Mr. Myers.

23 There's no new case that would be coming against the  
24 King parties. That is simply fanciful and an attempt to -- I  
25 actually have no idea what the point of that is, because there

1 is no chance of that happening. There is one claim, whether  
2 they make a payment that subsequently the bankruptcy trustee  
3 attempts to claim, assuming that he had the authority to do so,  
4 which to be clear, he does not -- that would not impact the  
5 King parties. They would have paid whatever was due by them,  
6 assuming that they -- or assuming that Serv Trust is successful  
7 on its counter claim. There is no potential damage to the King  
8 parties about this. The only basis for this declaratory  
9 judgment action is to undermine the ability of these parties to  
10 defend it. It did not resolve the claim. It simply gets them  
11 a more favorable, friendly opposing party with whom they think  
12 they can reach a better deal.

13 THE COURT: And do you want to respond to that?

14 MR. VERSTANDIG: I have no doubt that the trustee  
15 would be a more reasonable opposing party if it would stop the  
16 impetus for doing that. And that's not meant as an insult to  
17 Mr. Andres. By the way, if we cut a deal with the trustee,  
18 it's still subject to bankruptcy court approval. Everybody has  
19 the right to object, including the debtor. Everyone has the  
20 right to be heard on the merits of that deal. It's under I  
21 believe Federal Law Bankruptcy Procedure 90.19. It's not as  
22 though if we prevail on this matter, we can go into a back room  
23 with Roger Schlossberg, have my client hand over \$200 and  
24 decide we're done. It doesn't work that way.

25 THE COURT: Right.

1 MR. VERSTANDIG: With regard to being sued twice, I  
2 mean, I think Mr. Schlossberg would do it here -- I would hope  
3 not -- but here's the reality. I'll go back to my promissory  
4 note analogy. And I'll put it in the context of a bankruptcy.  
5 If the debtor is owed money on a promissory note and files  
6 bankruptcy and the promissory note becomes an asset of the  
7 estate. And the debtor goes out and gets John Doe to make a  
8 payment on the note. And the debtor takes that money and  
9 spends it on food, vacation, whatever it may be. You can bet  
10 the bankruptcy trustee is not going to credit that payment.

11 THE COURT: He's not going to what?

12 MR. VERSTANDIG: Credit that payment. So yes, there  
13 would be the risk of being sued twice, but again, they just  
14 don't have standing to bring these counter claims. And because  
15 they're counter claims, we uniquely have to deal with them in  
16 this case. We came here seeking declaratory judgment on a  
17 different matter that's not at issue today, dealing with  
18 redemption of an interest in an LLC. Because it's been posited  
19 as counter claims, we are forced to confront them in this case,  
20 which is what invites the admittedly peculiar and somewhat  
21 generous posture that the Court confronts today.

22 But I believe the bankruptcy court has been as clear  
23 as it can be in guiding and understanding what's happening  
24 here. It's good with what's happening here, and it looks  
25 forward to hearing what the outcome of what happens here may



1 be. If this Honorable Court were to decline to rule on the  
2 merits of the alter ego claim, Your Honor -- and that sounds  
3 darker than I mean it to -- but I'd have to go back to the  
4 bankruptcy court and ask for some other means of having that  
5 court adjudicate it, because this court felt it was not proper,  
6 ripe, whatever it may be. And that's just going to create a  
7 procedural dizziness, the likes of which I haven't seen in my  
8 remarkable young legal career. Thank you, Your Honor.

9 THE COURT: All right. Thank you. So let's go back.  
10 There are a whole lot of other defenses or claims raised in  
11 Docket Entry 164. Do you want to put anything on the record  
12 about that, Mr. Andres?

13 MR. ANDRES: Your Honor, in reviewing Mr.  
14 Verstandig's opposition, I think that that might be correct in  
15 that these claims are similar to the other issues. It would be  
16 involving docket entries and things that are not part of the  
17 pleadings and be more appropriate as a summary judgment or  
18 affirmative defenses. So I would say that we would not be  
19 abandoning those claims, but I don't see that there is a good  
20 way for us to pursue them here today in the posture that we're  
21 in right now.

22 THE COURT: All right. Okay. All right, so I'm  
23 going to take a short recess and look at a couple of things and  
24 then we'll be back.

25 MR. VERSTANDIG: Thank you, Your Honor.



1 THE COURT: Thank you.

2 THE BAILIFF: All rise.

3 THE CLERK: The Court stands in recess.

4 (Recess)

5 THE BAILIFF: All rise.

6 JUDGE'S RULING

7 THE COURT: Thank you. You can be seated. All  
8 right, so just to start, we're now on Docket Entry 164. I've  
9 already ruled on the other, 163. And I just wanted to have the  
10 record be clear that in Docket Entry 164, Mr. Myers raises  
11 several reasons to support his motion to dismiss the King  
12 parties' first amended complaint and declaratory judgment. And  
13 I think there were actually like perhaps 11 different arguments  
14 put forth, and I was prepared to address all of them. But in  
15 light of Mr. Andres's saying on the record this morning that he  
16 -- the stay argument, one of those arguments is this -- what I  
17 can refer to as the stay argument. And Mr. Andres I think has  
18 waived the stay argument and so we haven't heard anything on  
19 that.

20 Mr. Verstandig had comments on the stay argument as  
21 it relates to Docket Entry 163. And I said -- sort of off the  
22 cuff, but not really, I know we're on the record here -- that I  
23 tend to agree with Mr. Verstandig's arguments as they relate to  
24 the stay. But I'm just treating the stay argument as being  
25 waived by Mr. Andres. Is that correct, Mr. Andres? When I say

1 use of the word waiving it, because you made no argument on it,  
2 and I'm not going to rule on it.

3 MR. ANDRES: As a part of these proceedings?

4 THE COURT: Yes. So I'm not going to rule on that. .  
5 And then there were a number of other arguments that you have  
6 on behalf of Mr. Myers raised in your Docket Entry 164 that  
7 again -- and they include but are not limited to no actual  
8 controversy, the insufficient process, the personal  
9 jurisdiction. It's my understanding that you're also today,  
10 for purposes of this hearing, waiving those arguments. I am  
11 not going to rule on their merits. I'm just not addressing  
12 them. Is that how you want me to proceed?

13 MR. ANDRES: You know, with the understanding that  
14 other than personal jurisdiction and service of process, we  
15 would reserve those arguments for a future motion.

16 THE COURT: Okay. So I think you can file any future  
17 motions you want, but I'm not going to rule on their merits  
18 today. And I hope the record is clear on that. So the one  
19 argument that we've heard -- you've spent a lot of time this  
20 morning on, that I will rule on -- I think it's your fifth  
21 argument in the order of your memo -- is this -- you claim the  
22 Court has no subject matter jurisdiction because the Kings have  
23 standing to raise this alter ego theory.

24 And I appreciate counsel taking the time to walk me  
25 through this. I think it's really interesting and it's not

1 something that I have a lot of professional dealings with in my  
2 career. So I appreciate you sort of educating me this morning.  
3 And all of your arguments were very helpful to me as were the  
4 pleadings, the motions that you've previously filed.

5           So I tend to agree with the plaintiff's arguments,  
6 and I'll tell you why. A couple of things were important to my  
7 decision and I think should be on the record here. It is a  
8 distinction that deserves noting that the Kings are not  
9 creditors of the Myers -- of Mr. Myers. What King wants in  
10 their suit, they want Serv Trust's interest in this LLC, this  
11 Goldsboro, LLC to be revoked. And I think this is a redemption  
12 argument that they have made. They're not seeking money.  
13 They're seeking that Serv Trust's interests in the LLC be  
14 revoked.

15           The case law that was cited by Mr. Myers in support  
16 of his theory that only the trustee can bring this action has  
17 subtle differences to the facts in this case. And that is that  
18 those cases, the creditors were trying to get money from  
19 debtors and were therefore -- they were trying to promote this  
20 alter ego theory to sort of pierce the veil or get underneath  
21 the veil of the corporation of the debtor, corporate debtor, to  
22 get money, to get monetary relief. And here, as I said, the  
23 Kings aren't creditors. And I think the facts are therefore  
24 different.

25           So I think they do have standing to pursue the claim.



1 I also think it's important -- it's important to my ruling  
2 today that the trustees -- that the trustee, Mr. Schlossberg,  
3 is on board with the Kings pursuing this alter ego declaration.  
4 Mr. Verstandig and Mr. Mastro as officers of the Court have  
5 shared that with me and I think it's obvious that that is so.  
6 And so the facts in this case are just too different from the  
7 facts in the case law cited by Mr. Myers that sort of stands  
8 for this theory that only the trustee can pursue an alter ego  
9 theory. I think that might be true under the facts of the case  
10 as you've cited, but they just don't fit here. And I think  
11 this case is a little more unique in that the trustee is on  
12 board. Mr. Mastro representing the trustee has told me that.  
13 Mr. Verstandig has told me that as an officer of the court.

14 And I also have, you know, this side action, this  
15 parallel action in bankruptcy court, and in the order upon  
16 motion to clarify applicability of automatic stay, which today  
17 is the first time I've seen that, was ordered -- was entered  
18 and signed on July 8, 2019, the last paragraph of that order  
19 says that in the event the Circuit Court for Montgomery County,  
20 Maryland -- that's me -- determines that Serv Trust is Mr.  
21 Myers -- and he calls him the debtor -- Myers's alter ego, then  
22 the automatic stay provided by Section 362 of Title XI shall  
23 apply to Serv Trust any and further proceedings against Serv  
24 Trust in the matter styled as King v. Serv Trust in this Court,  
25 which is Case No. 436977, shall be stayed.



1           So upon that happening, Serv Trust becomes an asset  
2 of the bankruptcy estate. And so based on all of that, I hope  
3 my record is clear. I do think the facts of this case are  
4 distinguished from the cases that Mr. Myers cited and for those  
5 reasons, I do think it is appropriate to allow the plaintiff  
6 King to pursue their amended -- their first amended complaint  
7 for declaratory judgment.

8           And so accordingly, I will deny Mr. Myers's motion to  
9 dismiss at Docket Entry 164 for the reasons that I've stated .  
10 here on this record. So I think that covers everything that  
11 we're here to do this morning. And I guess we'll hear from you  
12 soon.

13           MR. VERSTANDING: Thank you, Your Honor.

14           MR. ANDRES: Thank you, Your Honor.

15           THE COURT: Thank you all very much. Thank you.

16           (The proceedings were concluded.)  
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✓ Digitally signed by Lauren Araya

DIGITALLY SIGNED CERTIFICATE

**DEPOSITION SERVICES, INC.** hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings in the Circuit Court for Montgomery County in the matter of:

Civil No. 736977

BRIAN KING

v.

SERV TRUST

By:



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LAUREN ARAYA  
Transcriber